

CONTRACT

This contract entered into this 9th day of September 2005, by and between the Beach Erosion Authority for Clean Oceans and Nourishment (BEACON), a joint powers authority, hereinafter called "BEACON," and Lutz, Law & Erlbaum, CPAs, hereinafter called "Contractor."

WITNESSETH

WHEREAS, BEACON has the authority to engage independent Contractors to perform services with or without the furnishing of material; and

WHEREAS, it is necessary and desirable that Contractor be engaged by BEACON for the purpose of performing services hereinafter described:

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. SERVICES TO BE PERFORMED BY CONTRACTOR

In consideration of the payments hereinafter set forth, Contractor will perform services for BEACON in accordance with the terms, conditions and specifications set forth herein. The Contractor will perform an audit in accordance with generally accepted auditing standards of the financial statements of BEACON for the year ending June 30, 2005. The Contractor will deliver 10 copies of the audited financial statements to the Ventura County Auditor-Controller's Office by December 31, 2005.

2. PAYMENTS

Payment of \$2,800 will be made within 30 days after issuance of the final audit reports and upon receipt of an invoice.

3. INDEPENDENT CONTRACTOR

No relationship of employer and employee is created by this contract. It being understood that Contractor is an independent contractor, and neither Contractor nor any of the persons performing services for Contractor pursuant to this contract, whether said person be member, partner, employee, subcontractor, or otherwise, will have any claim under this contract or otherwise against BEACON for sick leave, vacation pay, retirement benefits, social security, workers' compensation, disability, unemployment insurance benefits, or employee benefits of any kind.

It is further understood and agreed by the parties hereto that, except as provided in this contract, Contractor, in the performance of its obligation hereunder, is subject to the control or direction of BEACON merely as to the result to be accomplished by the services hereunder agreed to be rendered and performed, and not as to the means and methods for accomplishing the results.

If, in the performance of this contract, any third persons are employed by Contractor, such persons will be entirely and exclusively under direction, supervision and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other terms of employment or requirements of law, will be determined by Contractor, and BEACON will have no right or authority over such persons or the terms of such employment, except as provided in this contract.

The Contractor will comply with all of the provisions of the Worker's Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Divisions 4 and 5 of the California Labor Code, and all amendments thereto, and all similar State and Federal acts or laws applicable; and will indemnify and hold harmless BEACON from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including attorney's fees and costs, presented, brought or recovered against BEACON for or on account of any liability under any of said Acts which may be incurred by reasons of any work to be performed under this Contract.

4. **NON-ASSIGNABILITY**

Contractor will not assign this Contract, or any portion thereof, to a third party without the prior written consent of BEACON, and any attempted assignment without such prior written consent will be null and void and will be cause, at BEACON's sole and absolute discretion, for immediate termination of this Contract.

5. **TERM**

This Contract will be in effect from September 9, 2005, through December 31, 2005, subject to all the terms and conditions set forth herein.

6. **TERMINATION**

BEACON may terminate this contract at any time for any reason by providing 10 days written notice to Contractor. In the event of termination under this paragraph, Contractor will be paid for all work provided to the date of termination, as long as such work meets the terms and conditions of this contract. On completion or termination of this contract, BEACON will be entitled to immediate possession of, and Contractor will furnish on request, all computations, plans, correspondence and other pertinent data gathered or computed by Contractor for this particular Contract prior to any termination. Contractor may retain copies of said original documents for Contractor's files. Contractor hereby expressly waives any and all claims for damages or compensation arising under this Contract except as set forth in this paragraph in the event of such termination.

This right of termination belonging to BEACON may be exercised without prejudice to any other remedy which it may be entitled at law or under this contract.

7. **DEFAULT**

If Contractor defaults in the performance of any term or condition of this contract, Contractor must cure that default by a satisfactory performance within 10 days after service upon Contractor of written notice of the default. If Contractor fails to cure the default within that time, then BEACON may terminate this contract without further notice.

The foregoing requirement for written notice and opportunity to cure does not apply with respect to paragraph 4 above.

8. INDEMNIFICATION, HOLD HARMLESS AND WAIVER OF SUBROGATION

All activities and/or work covered by this contract will be at the risk of Contractor alone. Contractor agrees to defend, indemnify, and save harmless BEACON, including all of its boards, agencies, departments, officers, employees, agents and volunteers, against any and all claims, lawsuits, whether against Contractor, BEACON or others, judgments, debts, demands and liability, including without limitation those arising from injuries or death of persons and/or for damages to property arising directly or indirectly out of the obligations herein described or undertaken or out of operations conducted or subsidized in whole or in part by Contractor, save and except claims or litigation arising through the sole negligence or wrongdoing and/or sole willful misconduct of BEACON. Contractor agrees to waive all rights of subrogation against BEACON for losses arising directly or indirectly from the activities and/or work covered by this contract.

9. INSURANCE PROVISIONS

A. Contractor, at its sole cost and expense, will obtain and maintain in full force during the term of this contract the following types of insurance:

- 1) Commercial General Liability "occurrence" coverage in the minimum amount of \$1,000,000 combined single limit (CSL) bodily injury & property damage each occurrence and \$2,000,000 aggregate, including personal injury, broad form property damage, products/completed operations, broad form blanket contractual and \$50,000 fire legal liability.
- 2) Commercial Automobile Liability coverage in the minimum amount of \$1,000,000 CSL bodily injury & property damage, including owned, non-owned, and hired automobiles. Also to include Uninsured/Underinsured Motorists coverage in the minimum amount of \$100,000 when there are owned vehicles.

Contractor must have on file evidence of auto insurance in the minimum amount of \$100,000/300,000 bodily injury & \$100,000 property damage for all employees and volunteers associated with the contract.

- 3) Workers' Compensation coverage, in full compliance with California statutory requirements, for all employees of Contractor, and Employer's Liability in the minimum amount of \$1,000,000.
- 4) Professional Liability coverage in the minimum amount of \$1,000,000 each and \$2,000,000 aggregate.

- B. All insurance required will be primary coverage as respects BEACON and any insurance or self-insurance maintained by BEACON will be in excess of Contractor's insurance coverage and will not contribute to it.
- C. BEACON is to be notified immediately if any aggregate insurance limit is exceeded. Additional coverage must be purchased to meet requirements.
- D. BEACON's Boards, Agencies, Departments, Offices, Employees, Agents, and Volunteers are to be named as Additional Insured as respects work done by Contractor under the terms of this contract on all policies required (except Workers' Compensation).
- E. Contractor agrees to waive all rights of subrogation against BEACON's Boards, Agencies, Departments, Officers, Employees, Agents and Volunteers for losses arising from work performed by Contractor under the terms of this contract.
- F. Policies will not be canceled, non-renewed or reduced in scope of coverage until after sixty (60) days written notice has been given to BEACON.
- G. Contractor agrees to provide BEACON with the following insurance documents on or before the effective date of this contract:
 - 1) Certificates of Insurance for all required coverage.
 - 2) Additional Insured endorsements.
 - 3) Waiver of Subrogation endorsements (a.k.a.: Waiver of Transfer Rights of Recovery Against Others, Waiver of Our Right to Recover from Others).

Failure to provide these documents will be grounds for immediate termination or suspension of this contract.

10. NON-DISCRIMINATION

A. General

No person will on the grounds of race, color, national origin, religious affiliation or non-affiliation, sex, age, handicap, disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Contract.

B. Employment

Contractor will insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Contract. Contractor's personnel policies will be made available to BEACON upon request.

11. SUBSTITUTION

If particular people are identified as working under this Contract, the Contractor will not assign others to work in their place without written permission from BEACON. Any substitution will be with a person of commensurate experience and knowledge.

12. INVESTIGATION AND RESEARCH

Contractor by investigation and research has acquired reasonable knowledge of all conditions affecting the work to be done and labor and material needed, and the execution of this Contract is to be based upon such investigation and research, and not upon any representation made by BEACON or any of its officers, agents or employees, except as provided herein.

13. CONTRACT MONITORING

BEACON will have the right to review the work being performed by the Contractor under this Contract at any time during Contractor's usual working hours. Review, checking, approval or other action by BEACON will not relieve Contractor of Contractor's responsibility for the thoroughness of the services to be provided hereunder. This Contract will be administered by Kevin Ready, BEACON Executive Director, or his authorized representative.

14. ADDENDA

BEACON may from time to time require changes in the scope of the services required hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation which are mutually agreed upon by and between BEACON and Contractor will be effective when incorporated in written amendments to this Contract.

15. CONFLICT OF INTEREST

Contractor covenants that Contractor presently has no interest, including, but not limited to, other projects or independent contracts, and will not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract no person having such interest will be employed or retained by Contractor under this contract.

16. CONFIDENTIALITY

Any reports, information, data, statistics, forms, procedures, systems, studies and any other communication or form of knowledge given to or prepared or assembled by Contractor under this Contract which BEACON requests in writing to be kept confidential, will not be made available to any individual or organization by Contractor without the prior written approval of BEACON except as authorized by law.

17. NOTICES

All notices required under this Contract will be made in writing and addressed or delivered as follows:

To: BEACON
BEACON
Brian Brennan, Executive Director
501 Poli Street
Ventura, CA 93001

and

Christine L. Cohen
Auditor-Controller's Office
800 S. Victoria Avenue
Ventura, CA 93009-1540

To: Contractor: Lutz, Law & Erlbaum, CPAs
1000 Paseo Camarillo, Suite 235
Camarillo, CA 93010

Either party may, by giving written notice in accordance with this paragraph, change the names or addresses of the persons of departments designated for receipt of future notices. When addressed in accordance with this paragraph and deposited in the United States mail, postage prepaid, notices will be deemed given on the third day following such deposit in the United States mail. In all other instances, notices will be deemed given at the time of actual delivery.

18. MERGER CLAUSE

This Contract supersedes any and all other contracts, either oral or written, between Contractor and BEACON, with respect to the subject of this contract. This contract contains all of the covenants and contracts between the parties with respect to the services required hereunder. Contractor acknowledges that no representations, inducements, promises or contracts have been made by or on behalf of BEACON, except those covenants and contracts embodied in this contract. No contract, statement, or promise not contained in this contract will be valid or binding.

19. GOVERNING LAW

The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties under this contract, will be construed pursuant to and in accordance with the laws of the State of California.

20. **SEVERABILITY OF CONTRACT**

If any term of this contract is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the contract terms will remain in full force and effect and will not be affected.

21. **CUMULATIVE REMEDIES**

The exercise or failure to exercise of legal rights and remedies by BEACON in the event of any default or breach hereunder will not constitute a waiver or forfeiture of any other rights and remedies, and will be without prejudice to the enforcement of any other right or remedy available by law or authorized by this contract.

22. **COMPLIANCE WITH LAWS**

Each party to this contract will comply with all applicable laws.

23. **CONSTRUCTION OF COVENANTS AND CONDITIONS**

Each term and each provision of this contract will be construed to be both a covenant and a condition.

IN WITNESS WHEREOF the parties hereto have executed this Contract.

BEACON

CONTRACTOR

By: _____
Authorized Signature

By: _____
Authorized Signature

Steve Bennett
Printed Name

Lutz, Law & Erlbaum, CPAs
Firm name

Printed Name

Chair, BEACON Board
Title

Title

Date

Date

Tax Identification No.

